IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 15569 of 2007(C)

OS.516/2003 of MUNSIFF COURT,CHAVAKKAD
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PETITIONER:

SANTHAKUMARI, AGED 45,
W/O.ACHUPARAMBIL VEETTIL,
SREENIVASAN, NATTIKA VILLAGE, DESOM,
CHAVAKKAD TALUK, THRISSUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENTS:

PUSHPAN, AGED 46 YEARS,
S/O.THATTARUPURACKAL AYYAPPAN,
NATTIKA VILLAGE, DESOM
CHAVAKKAD TALUK, THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.15569 OF 2007

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Dated this the 24th day of May, 2007

JUDGMENT

This writ petition is filed seeking to quash Ext.P5 order. The plaintiff in the suit has moved application for issuance of a Commission with the assistance of a Taluk Surveyor to identify plaint A and B schedule properties and submit a report and sketch with the assistance of the surveyor. The court below by a one line order closed the I.A. holding that the assistance of the surveyor is unwarranted. The court did not consider whether the averments in the petition require a consideration for the purpose of eliciting additional facts for a proper disposal of the case.

2. On a perusal of the records, it is seen that another Commissioner has visited the property and submitted a rough sketch and report. It is a settled principle that without taking recourse to set aside the plan and report or to remit the same for the purpose of gathering additional particulars, it is not proper for the court to entertain an application for issuance of a Commission. So, on that ground, the petition filed by the petitioner is only liable to be rejected.

3. But, at the same time, the subject matter of the suit is concerning a right of way and there is a prayer for mandatory injunction. Particulars may be necessary for proper determination of the dispute between the parties. If the petitioner feels that the materials available before court, as supplied by the Commissioner are insufficient or it is wrong, it is for the petitioner to move the court by filing appropriate application to remit or set aside the Commissioner's report.

Reserving that right to the petitioner, this writ petition is disposed of. If fresh application is filed for remitting or set aside the Commissioner's report, the court below is directed to consider it after giving notice to the other side and dispose of the same in accordance with law.

M.N.KRISHNAN, JUDGE

Cdp/-